

Sweet Like Sugar, Bitter Like a Lemon: Bulgaria's CVM Report

Radosveta Vassileva

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On 13 November 2018, the Commission [published](#) the latest reports on Bulgaria and Romania under the Cooperation and Verification Mechanism (CVM). Bulgaria's report is full of praise while Romania's report – full of criticism. The reactions, which followed, stand in stark contrast, too. Romania's civil society seems to have welcomed the report. However, Romania's government [threatened](#) to sue the Commission before the Court of Justice of the European Union. In Bulgaria, the government was overjoyed whereas Bulgaria's civil society – clearly upset.

Hristo Ivanov, former Minister of Justice in the second Borissov government [argues](#): “The [latest] CVM report is a borderline grotesque which evidences a severe case of sciatica attack.” Ivanov himself resigned because of Borissov's refusal to support him in his fight for judicial reform. Some critics [called](#) the report “an indulgence by the Commission,” thus alluding to the commercialization of indulgences in the Catholic Church in the Middle Ages. Yet others lamented the disintegration of EU values.

Why are many members of Bulgaria's civil society enraged? The short answer is that the picture painted by the CVM report does not correspond to reality and only pours water to Bulgaria's autocratic mill.

The exercise known as CVM

Bulgaria and Romania were subjected to the CVM because they did not entirely fulfill the accession criteria. The Commission set benchmarks for each of them to encourage judicial independence, fighting corruption, and, in the case of Bulgaria, combatting organized crime. One year after entry to the EU, in 2008, the Commission had realized the task was monstrous, so the mechanism had to [remain](#) for “some time”.

Years dragged along, but the CVM remained. Romania's reports under the mechanism were habitually more upbeat than Bulgaria's. In 2016, the President of the Commission Jean-Claude Juncker even [suggested](#) that Romania could see the CVM lifted before Bulgaria. This made many members of Bulgaria's civil society, including scholars, [question](#) if and when Bulgaria would catch up.

The CVM reports on Bulgaria have always been sugar-coated. The Commission traditionally tried to find something positive while conveniently overlooking disturbing developments. Still, from the perspective of time, one could see an attempt, albeit overly diplomatic, to encourage some form of change. The latest report, however, seems to be the ultimate example of hypocrisy and betrayal of EU values.

Complicity

Quite unexpectedly (from a legal, not an EPP standpoint), the Commission [discerned](#) “steady progress” and declared three benchmarks “provisionally closed”: judicial independence, the legal framework, and the fight against organized crime. In fact, Frans Timmermans, the Commissioner responsible for the Rule of Law, even [announced](#) the mechanism could be lifted for Bulgaria before the end of this Commission’s term if progress continued.

For those following the downfall of the rule of law in Bulgaria, this assessment certainly appears delusional. To cite a [tweet](#), inasmuch as this is unusual for an academic article, Prof. O’Brennan expressed worries that the CVM has become “a sick joke”.

Judicial independence?

Bulgaria is permanently torn by scandals evidencing excessive and illegitimate pressure on the judiciary, which Brussels stubbornly ignores. One of the most striking ones is the so-called [Yaneva Gate](#) from 2015: leaked recordings of conversations between high-level judges, which were published on the website of the Bulgarian partner of the Organized Crime and Corruption Reporting Project. The two judges overtly discussed how Prime Minister Borissov and the current General Prosecutor Tsatsarov instructed courts how to decide cases of interest to them. One of the participants in the discussion confirmed that these conversations took place, but Bulgaria’s authorities did their best to avoid an investigation. The convenient excuse was that these conversations were probably taped illegally. It is striking that in the [technical report](#) associated with the CVM report from 2016 the Commission encouraged an independent investigation of this scandal, but it did not react to Bulgaria’s subsequent failure to investigate. It is even more shocking that former Minister of Justice Hristo Ivanov [contends](#) Commissioner Timmermans personally promised him he would insist on such an investigation, but did not keep his word.

The President of Bulgaria’s Supreme Court of Cassation, the highest-ranking judge in Bulgaria, has been publicly [complaining](#) from pressure and threats because of his refusal to comply with political orders for years. Part of the harassment was visible to the general public too: the car bolts of his official state car were found to be loosened, masked men [greeted](#) him with cut-off lamb heads in an attempt to recreate a scene from *The Godfather*, etc. However, for the Commission, this never mattered: there is not even a reference to these allegations and incidents in the CVM report.

Legal framework?

Bulgaria’s criminal law has not been substantively reformed since communist times. The court is over-shadowed by a Prosecutor’s Office with an entirely vertical structure and excessive powers. Since the decision [Kolevi v Bulgaria](#) by the ECHR (2009), the Committee of Ministers at the Council of Europe has been asking for a reform to no avail. The Commission, of course, is not worried that Bulgaria has been stubbornly refusing to comply with the decision for almost 10 years.

Meanwhile, the list of controversial amendments to Bulgaria's legislation is long. One example includes the [amendments](#) the Code of Criminal Procedure in 2017, which increased the already disproportionate powers of the prosecution and compromised the equality of arms in criminal proceedings. The Association of Bulgarian Judges, the Association of Bulgarian Law and tens of NGOs warned these were unconstitutional and in severe breach of the European Convention on Human Rights, but nobody in Brussels paid attention, as usual.

Bulgaria is in no rush to transpose or apply EU Directives either. For instance, it still has not transposed [Directive 2013/48/EU](#) of the European Parliament and of the Council of 22 October 2013 "on the right of access to a lawyer" when the deadline was November 2016. In fact, the concluding observations on the sixth periodic report on Bulgaria by the United Nations Committee against Torture from 15 December 2017 (CAT/C/BGR/CO/6) states that the Committee is concerned that "more than 70 per cent of detained persons do not have access to a lawyer from the very outset of criminal proceedings; and that some do not have legal representation throughout the criminal proceedings against them."

Organized crime?

The country is permanently shaken by rumors that there is a government umbrella on organized crime, including smuggling, human trafficking, drug trafficking, etc. If that is so, data provided by Bulgaria's government about its alleged fight with organized crime should be taken with a grain of salt and verified through foreign intelligence. A brief look on [Wikileaks](#) shows that the US Embassy in Bulgaria worried about Prime Minister Borissov's links to the underground.

Bulgaria has seen numerous high profile-murders of prosecutors, key witnesses and court-appointed experts in key proceedings, businessmen, civil servants, etc., which have not been solved either.

The price of sugar

How much does a caramelized CVM report cost? An EPP membership is certainly part of the price. While Romania does not have an EPP-led government, Bulgaria does. During the Bulgarian Presidency of the Council of the European Union, it rained praise and accolades from prominent members of the EPP. Juncker [said](#) Bulgaria's "success" could serve as an example for others. Daul [argued](#) Borissov was the "best chef d'Etat in Europe." Weber could not be more [impressed](#) with Bulgaria's achievements. Similarly to the case of Orbán and Hungary, the EPP followed the scenario of "The Emperor's New Clothes" with Borissov and Bulgaria. Of course, in return, Borissov has provided unconditional support for the EPP: his MEPs voted against the activation of Article 7 against Hungary at the European Parliament, his delegates voted in favor of Manfred Weber as EPP's *Spitzenkandidat* at EPP's Congress in Helsinki, etc. In many ways, Borissov is more well-behaved than Orbán too: he does not engage in anti-Brussels rhetoric.

The ultimate problem, however, is that the CVM is ineffective and clearly susceptible to capture. It is known, for instance, that contentious paragraphs are often deleted from the second to last draft of the report due to political bargaining behind the curtain. It is also unclear how exactly progress is measured and who the Commission relies on to verify the accuracy of information it receives. An example from Romania, which struck me personally, is that in 2010, the Commission said that proposed [changes](#) to Romania's Code of Criminal Procedure were "a step in the right direction." In 2016, Romanian scholars [observed](#) that for less than two years, Romania's Constitutional Court "[had] ruled 19 times over the inconformity of the [Code of Criminal Procedure] with the Constitution." From the perspective of legal certainty or fundamental rights, I find it difficult to refer to a flawed reform as a step in the "right" direction. Positive intentions to carry out reform are merely a step: whether it is in the right or in the wrong direction can be seen only after a careful legal analysis, which was obviously not done in this case.

Wrong math

The reasons why the Commission's complicity with Bulgaria's regime is dangerous for the EU are numerous. First, instead of using the CVM to encourage positive change in Bulgaria, the Commission relies on this mechanism to legitimize an autocratic government. This can have devastating consequences for Bulgaria's rule of law. Second, the CVM is compromised and Commission no longer benefits from the trust of many prominent members of Bulgaria's civil society, which encourages Euroscepticism at a time when the far-right is on the rise. Third, in practice, the latest CVM paves the way to Bulgaria's quick Schengen and Eurozone membership, which may make Bulgaria a liability for all Member States.

Above all, however, Bulgaria's case should not be looked in isolation. It raises concern about how the [Regulation](#) "on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States" will be eventually applied in the future by the next Commission. If the status quo in the EU is kept, there is a high risk of dual standards, which undermine the very essence of the EU as a "Union of values".

Bulgaria's CVM report is certainly sweet for the EPP and Bulgaria's autocratic regime, but bitter for everyone who believes in EU values.

